

except that if it appears to the examining immigration officer that any person in the United States being examined under this section is *prima facie* deportable from the United States, further action with respect to his examination shall be deferred and further proceedings conducted as provided in section 242 of the Act and part 242 of this chapter. When the foregoing inspection procedure is applied to any aircraft, persons examined and found admissible shall be placed aboard the aircraft, or kept at the airport separate and apart from the general public until they are permitted to board the aircraft. No other person shall be permitted to depart on such aircraft until and unless he is found to be admissible as provided in this section.

(b) *In contiguous territory and adjacent islands.* On and after December 24, 1952, in the case of any aircraft or vessel proceeding directly from a port or place in foreign contiguous territory or adjacent islands to a port of entry in the United States, the examination and inspection of passengers and crew required by the Act and final determination of admissibility may be made immediately prior to such departure at the port or place in foreign contiguous territory or adjacent islands and shall have the same effect under the act as though made at the destined port of entry in the United States.

[23 FR 3997, June 7, 1958, as amended at 24 FR 2583, Apr. 3, 1959; 50 FR 11842, Mar. 26, 1985; 54 FR 101, Jan. 4, 1989]

#### § 235.6 Referral to immigration judge.

(a) *Notice.* If, in accordance with the provisions of section 235(b) of the Act, the examining immigration officer detains an alien for further inquiry before an immigration judge, he shall immediately sign and deliver to the alien a Notice to Alien Detained for Hearing by an Immigration Judge (Form I-122). If an asylum officer denies an application for asylum or withholding of deportation filed by an alien who is an applicant for admission or has been paroled under § 212.5 of this chapter, this Notice may be signed and delivered to the alien by the supervisory asylum officer or by the Assistant Commissioner, Refugees, Asylum and Parole. If the alien is unable to read or under-

stand the notice, it shall be read and explained to him by an employee of the Service, through an interpreter, if necessary, prior to such further inquiry. In addition, the alien shall be advised of his right to representation by counsel of his choice at no expense to the Government, and of the availability of free legal services programs qualified under part 292a of this chapter and organizations recognized pursuant to § 292.2 of this chapter, located in the district where the alien is being detained. He shall also be furnished with a list of such programs.

(b) *Certification for mental condition; medical appeal.* An alien certified under paragraph (1), (2), (3), (4), or (5) of section 212(a) of the Act shall be advised by the examining immigration officer that he may appeal to a board of medical officers of the United States Public Health Service pursuant to section 234 of the Act. If such an appeal is taken, the district director shall arrange for the convening of the medical board.

[24 FR 6477, Aug. 12, 1959, as amended at 44 FR 4653, Jan. 23, 1979; 56 FR 50812, Oct. 9, 1991]

#### § 235.7 Referral of certain cases to district director.

If the examining immigration officer has reason to believe that the cause of an alien's excludability can readily be removed by the posting of a bond in accordance with section 213 of the Act, or by the exercise of section 211, section 212(d) (3) or (4), or section 212(c) of the Act, or by granting permission to reapply for admission after deportation or removal, he may in lieu of detaining the alien for hearing in accordance with section 235(b) and section 236 of the Act refer the alien's case to the district director within whose district the port is located for consideration of such action and defer further examination pending the district director's decision. Refusal of a district director to authorize admission under section 213, or to grant an application for the benefits of section 211, section 212(d) (3) or (4), or section 212(c), or to grant permission to reapply for admission after

deportation or removal shall be without prejudice to the renewal of such application or the authorizing of such admission by the special inquiry officer without additional fee.

[28 FR 4251, Apr. 30, 1963]

**§ 235.8 Temporary exclusion.**

(a) *Report.* Any immigration officer who temporarily excludes any alien under section 235(c) of the Act shall report the action promptly to the district director who has administrative jurisdiction over the port at which the alien arrived. The immigration officer shall, if possible, take a brief sworn question-and-answer statement from the alien, and the alien shall be notified by personal service of Form I-147 of the action taken and the right to make written representations. If the subject of the report is an alien who seeks to enter the United States other than under section 101(a)(15)(D) of the Act, the district director shall forward the report to the regional commissioner for further action as provided in paragraph (b) of this section.

(b) *Action by regional commissioner.* If the regional commissioner is satisfied that the alien is inadmissible to the United States under paragraph (27), (28), or (29) of section 212(a) of the Act and if the regional commissioner, in the exercise of his discretion, concludes that such inadmissibility is based on information of a confidential nature the disclosure of which would be prejudicial to the public interest, safety, or security, he may deny any hearing or further hearing by a special inquiry officer and order such alien excluded and deported, or enter such other order in the case as he deems appropriate. In any other case the regional commissioner may direct that an immigration officer shall further examine the alien as to his admissibility or that the alien be given a hearing or further hearing before a special inquiry officer.

(c) *Finality of decision.* The decision of the regional commissioner provided for in paragraph (b) of this section shall be final and no appeal may be taken therefrom. The decision of the regional commissioner shall be in writing, signed by him and, unless it contains confidential matter, a copy shall be

served on the alien. If the decision contains confidential matter, a separate order showing only the ultimate disposition of the case shall be signed by the regional commissioner and served on the alien.

(d) *Hearing by immigration judge.* If the regional commissioner directs that an alien temporarily excluded be given a hearing or further hearing before an immigration judge, the hearing and all further proceedings in the matter shall be conducted in accordance with the provisions of section 236 and other applicable sections of the Act to the same extent as though the alien had been referred to an immigration judge by the examining immigration officer; except, that if confidential information, not previously considered in the matter, is adduced supporting the exclusion of the alien under paragraph (27), (28), or (29) of section 212(a) of the Act, the disclosure of which, in the discretion of the immigration judge, may be prejudicial to the public interest, safety, or security, the immigration judge may again temporarily exclude the alien under the authority of section 235(c) of the Act and further action shall be taken as provided in this section.

[22 FR 9791, Dec. 6, 1957; 22 FR 9519, Nov. 28, 1957, as amended at 48 FR 8, Jan. 3, 1983; 48 FR 30350, July 1, 1983]

**§ 235.9 Conditional entries.**

(a) *Inspection of conditional entrant and refugee parolee as to admissibility for permanent residence.* Each alien who has been admitted under section 203(a)(7) as a conditional entrant, or paroled under section 212(d)(5) of the Act as a refugee prior to September 30, 1980, and who is not otherwise eligible for retroactive adjustment of status to permanent resident, shall be required to appear before an immigration officer within one year following conditional entry or parole. If over 14 years of age, the conditional entrant or parolee shall be interrogated under oath by an immigration officer and a determination of admissibility shall be made under parts 235 and 236 of this chapter. Except as provided in parts 245 and 249 of this chapter, an application under this part shall be the sole method of requesting the exercise of discretion under section 212 (g), (h), or (i) of the Act, insofar as it relates to